

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

RSA.No.32 of 1996.

Reserved on 27-6.2007.

Date of Decision :3rd September,2007.

Jagannath	...Appellant.
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Versus:

Om Parkash.	...Respondent.
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Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ Yes.

For the appellant:	Mr.Onkar Jairath, Advocate.
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For Respondent.	Mr.Bhupinder Gupta, Sr.Advocate with Mr.Janesh Gupta, Advocate.
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Sanjay Karol,J .

This regular second appeal has been filed against the judgment dated 5th January, 1994 passed by District Judge in Civil Appeal No.179 of 1982 titled as Om Prakash Vs. Jagan Nath whereby the judgment and decree dated 23rd March, 1982 passed by Sub Judge, Ist Class, Dharamsala has been set aside.

For the purpose of convenience, the appellant herein is referred to as the 'plaintiff' and the respondent is referred to as the 'defendant'.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

The appeal was admitted on the following substantial questions of law:

1. What is the effect of H.P. Tenancy and Land Reform Act, 1972 in the present suit?
2. Whether courts below has no jurisdiction to try the present suit, if so its effect?
3. Whether the suit is not maintainable in the present form, if so its effects?
4. Whether the full bench judgment of this Hon'ble High Court Chunia Vs. Jindu has been wrongly and improperly applied to the present case, if so its effects?.

The plaintiff filed a suit for declaration that he is the owner in possession of property comprising in Khasra Nos. 381,391,392 of Khata No.1 and khasra No.382 of khata No.2 khatauni No.3 situate in Mohal Lanj, Tehsil and District Kangra and that the defendant, who was the caretaker, in his absence and without his consent got an entry of the suit land recorded in his favour as tenant in collusion with revenue staff and was never inducted as tenant either by him or by his predecessor.

The defendant resisted the suit on the ground that he was duly inducted as tenant by the father of the plaintiff on payment of rent.

The trial court framed the following issues:

1. Whether the plaintiff is owner in possession of the suit property
OPP.
2. Whether the suit is not maintainable in the present form?
OPD.
3. Whether the suit is within time: OPP
4. Whether act and conduct of the plaintiff is bar to the present suit?
OPD.
5. Whether this court has no jurisdiction to try this suit?

OPD.

6. What is the effect of H.P. Tenancy and Land Reforms Act on the present suit?

OPD.

7. Whether the defendant is in possession of the suit land on payment of rent?

OPD.

8. If issue No.7 is proved, whether the defendant is not the tenant under plaintiff?

OPD.

9. Relief.

After conducting the trial, the court held that the civil court had the jurisdiction to try the suit and that the plaintiff being owner was entitled for a decree of possession as prayed for.

An appeal was filed against the judgment and decree of the Sub Judge in the Court of District Judge, who vide impugned judgment held that the civil Court did not have jurisdiction to entertain the suit in view of the law laid down by the Court in *Chunnia Devi Vs. Jindu Ram*, 1991 (1) SIM LC 223. Consequently he accepted the appeal and ordered return of the plaint. Aggrieved against the same, the present appeal has been filed.

The trial Court while deciding issue No.5 has returned the following finding:

“It is contended on behalf of the defendant that there is relationship of landlord and tenant between the parties, therefore, this court has no jurisdiction to entertain the matter. Admittedly, where the relationship of land lord and tenant is admitted by the parties, civil court has no jurisdiction, but where the relation ship is in dispute, the

jurisdiction of civil court is not ousted. The issue is decided accordingly.”

In *Chunnia Devi* (supra), where the relationship of tenancy was not in dispute, the court after considering the various judgments came to the following conclusion:

“a) that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37(3) and section 46 of that Act; and

(b) the civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reform Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with”.

In *Tulsa Singh Vs. Agya Ram and others*, 1995 (1) S.L.J. 428, the Court held that the change of tenancy rights has to be in accordance with Clause 9.8 of the H.P. Land Records Manual which deals with the change of entry in khasra Girdawari and the relevant para of the judgment is reproduced as under:

“The crops will be entered in the khasra girdawari, as the inspection proceeds, in the column provided for the purpose. The change in rights, rents and possession will be noted in the appropriate column in pencil. And, where the boundaries or area of a field have changed in such a manner as to require a correction of the field map, the patwari will make a rough measurement, sufficient for the crop entries. All changes in rights, rents and possession shall be recorded by the patwari in pencil and by putting a cross in pencil in

columns 12,16, 20,24 and 28 of khasra girdawari in accordance with Govt. instructions issued vide letter No.10-5/73-II, dated 4.9.80. As per these instructions, the patwari will give information of such changes to the Tehsildar/Naib-Tehsildar as the case may be. The Tehsildar/Naib-Tehsildar will inquire and given reasonable opportunity of being heard to the parties. The inquiry should be completed within 3 months and the entries will be made in khasra girdawari according to the orders passed by the Revenue Officers after entering in his diary”.

The ratio of *Chunnia Devi* (supra) has subsequently been followed by this Court in *Pritam chand and others Vs. Krishan Kumar and others* 1997 (1) Sim. L. C. 255, *Shankar Vs. Smt. Rukmani and others*, 2003 (1) Shim. L. C. 300 and *Ramesh Chander and other Vs. Mahan Singh and others* Latest HLJ 2005 (HP) 1111.

In *Dhulabhai Etc. Vs. State of Madhya Pradesh and another*, AIR 1969 Supreme Court 78, the Court has held as under:

“Where the statute gives finality to the orders of the special tribunals the civil court’s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure”.

In *Raja Durga Singh of Solon Vs. Tholu and others*, AIR 1963 Supreme Court 361, the court observed as under:

“There is no entry or item in S.77(3) relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It would, therefore, be reasonable to infer that the legislature barred

only those suits from the cognizance of a civil court where there was no dispute between the parties that a person cultivating land or who was in possession of land was a tenant. A suit for possession and mesne profits against the defendants who claimed to be occupancy tenants but whose status as tenants was denied by the plaintiff, is not barred from the cognizance of the civil court under S. 73(3) read with the first proviso.”

Applying the aforesaid principles, I am of the view that In the present case, Civil Court could entertain and decide the controversy involved in the suit and its jurisdiction is not barred on two counts: (i) that the plaintiff/appellant who is the owner in possession of the suit land never accepted the status of the defendant/respondent as the tenant in the suit land. Therefore, there is dispute between the parties with regard to its status of landlord and tenant. (ii) the statutory authority while changing the revenue entries have not acted in conformity with the fundamental principles of judicial procedure and the provisions of the act (section 46 of the H.P. Land Revenue Act) has not been complied with. The procedure prescribed for effecting the revenue entries has not been carried out is clear from the plaintiff stand that entries were recorded exparte and without his consent. The present case would fall within the exceptions carved out in Chunnia Devi, Dhulabhai and Krishan Kumar (supra). This court in RSA No.221 of 1991 titled as Ramesh Kumar and others Vs. Mandir Thor, decided on 1.6.2007, in some what identical circumstance has held that the civil Court would have jurisdiction to entertain the suit. Therefore, in my view, the lower appellate Court has wrongly applied the ratio of law laid down by a Full Bench of this Court in

Chunnia Devi (supra) and consequently wrongly reversed the finding returned by the trial Court on the point of jurisdiction.

During the course of the hearing, learned counsel for the respondent has submitted that during the pendency of the present appeal mutation of title as land owner has been effected in favour of the defendant by the revenue authority on 4.11.1995. In my view, any order passed during the pendency of this appeal is always subject to the final decision and would have no bearing on the facts of the present case for the simple reason that the relationship of landlord and tenant between the parties, in any case is seriously in dispute.

The decision of this Court relied upon by the learned counsel for the respondent in *Malkiat Singh and another Vs. Hardial Singh*, 1994 (Suppl.) Sim.L.C. 77 is distinguishable for the reasons that in para-12 of the said report the court itself has concluded that there is no material on record to show that the statutory authorities conforming the proprietary rights upon the appellant had not acted in conformity with the fundamental principles of judicial procedure or that the provisions of the Act had not been complied with. Similarly, the ratio of law laid down in *Gopi Chand and another Vs. Sonam Dass and others*, 1998 (1) Shim.L.C.488 is not applicable to the facts of the instant case.

The questions of law Nos 2 & 4 are answered accordingly. The other questions are left open.

Consequently, the appeal is accepted. The impugned judgment dated 5th January, 1994 of the District Judge is set aside and the appeal is remanded to the concerned District Judge with the direction that the appeal be heard and decided on merits in accordance with law. Considering that the dispute between the parties is pending since long,

the learned District Judge shall endeavour to dispose of the matter as expeditiously as possible and preferably within a period of six months from today.

The parties through their learned counsel are directed to appear before the learned first appellate Court on 20th September, 2007. Record of the proceedings be sent back immediately.

**(Sanjay Karol),
Judge.**

September 3, 2007(R)